

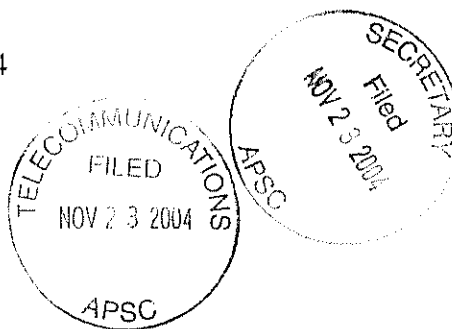


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November 22, 2004

Walter L. Thomas, Jr.  
Secretary  
Alabama Public Service Commission  
RSA Union Building, Room 850  
100 North Union Street  
Montgomery, AL 36104



**Re: Proposed Revisions to Price Regulation and Local Competition Plan –  
Docket No. 28590**

Dear Mr. Thomas:

Enclosed are the original and ten (10) copies of BellSouth Long Distance Inc.'s Comments in connection with the above-referenced docket. Please distribute as needed and return a stamped copy of the cover letter to my office in the envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

*Mario Soto/HSA*  
Mario Soto

MS/caj  
Enclosures

cc: Parties of Records  
Honorable John A. Garner (ALJ)  
James E. Wilson, Esq.  
Terry Butts, Esq.  
Mark G. Montiel, Esq.  
Ms. Judy McLean, Directory of Advisory  
Larry Smith, Acting Director

BEFORE THE  
ALABAMA PUBLIC SERVICE COMMISSION

In Re: Proposed Revisions to Price	)	DOCKET NO. 28590
Regulation and Local Competition	)	
Plan	)	

**COMMENTS OF BELL SOUTH LONG DISTANCE, INC.**

By Order dated November 9, 2004 in this Docket, the Alabama Public Service Commission ("Commission") set forth a schedule for the submission of Comments and Reply Comments from interested parties regarding revisions to the Commission's Alabama Telecommunications Regulation Plan. Consistent with the Commission's Order, BellSouth Long Distance, Inc. ("BellSouth Long Distance") files the following comments. BellSouth Long Distance is also filing comments herein related to the proposed Alabama Access Reduction Fund.

**DISCUSSION**

A. **Introduction**

BellSouth Long Distance is certificated both as an Interexchange Carrier ("IXC") and a Competitive Local Exchange Carrier ("CLEC") in the State of Alabama. As such, BellSouth Long Distance is a participant in one of the most highly competitive industries in Alabama today: telecommunications. Moreover, the level of telecommunications competition continues to grow. New competitors are constantly entering the local exchange and interexchange markets, some using "traditional" means of competing, other using new methods. Some local competitors use resale or unbundled network elements to provide services to their end users. Many long distance companies use their own facilities or resale in the provision of their services. In addition, new types of competitors are also entering these

markets. Cable companies, in particular, are well along the way to providing telecommunications through voice over internet protocol (“VOIP”) technology. More and more customers are also using wireless technology, such as cellular, as their exclusive means of obtaining telecommunications services. In addition, because of both VOIP and cellular services and new marketing strategies, the traditional line between local service and long distance service is blurring as customers are offered “any distance” plans.

Given this greatly enhanced level of competition in all aspects of telecommunications, BellSouth Long Distance believes that any proposal to impose additional regulatory burdens on telecommunications providers, whether local or long distance, is misplaced. Rather than adding regulatory requirements, with their attendant burdens and costs, BellSouth Long Distance respectfully submits that the Alabama Public Service Commission (the “Commission”) should be eliminating existing requirements for all participants in this industry. In these comments, BellSouth Long Distance will address the provisions that, at a minimum, should be deleted from the proposed Alabama Telecommunications Regulatory Plan (the “ATRP”).

B. CLEC Rules

The proposed ATRP rules for CLECs mirror, in many aspects, the proposed rules for incumbent local exchange carriers. For the reasons discussed above, the regulatory burden for all local exchange carriers should be lightened to reflect the increasing levels of local service competition. If the Commission decides not to remove existing regulatory requirements for all carriers, it should nonetheless not impose new or additional requirements on CLECs.

In particular, Part IV, Section 4A, Pricing Rules, of the ATRP would impose a requirement that the price of a CLEC's tariffed services equal or exceed its Total Service Long Run Incremental Cost ("TSLRIC"). Although the rule allows for exceptions to this requirement, it further requires prior Commission approval for such exceptions. Similar pricing rules would also be applied to Contract Service Arrangements ("CSAs") under Section 5 of Part IV.

The TSLRIC requirement should not be imposed on any CLEC service, whether offered pursuant to tariff or CSA. The competitive market for local exchange telecommunications services in Alabama has grown and thrived without a pricing floor requirement. Market discipline has ensured that competitors have priced in a rational manner. To now impose a TSLRIC price floor, particularly in light of the even broader range of competitors and competitive offerings that exist today, would only serve to add unnecessary costs, i.e., the cost of conducting a TSLRIC study for every tariff item and CSA, that would, by necessity, be passed on to end users. Thus, the end result of such a requirement would be higher service prices to traditional telecommunications end users throughout Alabama. This added cost burden would not, however, be shared by VOIP and wireless service providers. This surely is not what the Commission intends. In addition, by imposing a TSLRIC requirement on CSAs, the ability of a CLEC to respond in a timely manner to a customer request for service could be significantly affected. A requirement to conduct a TSLRIC study for every CSA would add time to a company's ability to respond to a customer's expressed needs, thereby delaying the customer's obtaining the new services it desires. Moreover, VOIP providers competing for the same customers would not be faced with these time delays in responding to a customer's request for service, thereby giving such

providers an artificial advantage. The added cost burdens, time delays and inability to meet certain customer needs because of pricing requirements imposed on some competitors and not others will distort the competitive landscape in the state of Alabama by favoring new non-traditional service providers. In addition, many medium sized customers and most large (enterprise) customers are national or regional in scope, having sites in multiple states. Almost all of these customers demand a single price for the same service in every location. While carriers will price above costs in the aggregate, on occasion carriers may not be able simultaneously to meet the customer's single price demand and the Alabama TSLRIC pricing requirement. Accordingly, BellSouth Long Distance respectfully submits that Part IV, Section 4A of the ATRP be deleted in its entirety as follows:

#### 4. PRICING RULES

##### ~~—A. Pricing Rules—General~~

- ~~(1) The price for any new or existing service shall equal or exceed its TSLRIC unless:  
(1) specifically exempted by the Commission based on public interest concerns;  
or (2) the CLEC in good faith, and upon Commission approval, prices the service  
in order to meet the equally low price of a competitor.~~
- ~~(2) No price reductions that will result in prices below TSLRIC will be allowed  
unless approved by the Commission. No price reductions will be allowed for any  
existing services that are priced below TSLRIC on the effective date of this Plan,  
unless approved by the Commission.~~
- ~~(3) When no TSLRIC study is readily available, the Commission may, at its  
discretion, consider a surrogate for the TSLRIC cost study as the basis for  
analyzing the price floor requirement.~~

##### ~~B. A. Pricing Rules – Retail Services~~

- ~~(1) Prices for Retail Telecommunications Services may be adjusted at the discretion  
of the CLEC.~~

In the alternative, should the Commission decide to retain the TSLRIC pricing standard, it should allow CLECs to meet competitors' prices without having to obtain the Commission's approval. This requirement, as currently contemplated, would impede a company's ability to compete for a specific customer's business. Many mid-to-large size businesses have short time frames in which they seek competitive bids for their purchase of telecommunications services. If a second carrier had to first obtain the Commission's approval to match a competitor's pricing, it would place that second carrier at a significant disadvantage. Ultimately, the resulting lessened level of competition would be to the detriment of end users, who would be denied timely competitive responses for their telecommunications needs. Thus, in the alternative, BellSouth Long Distance proposes the following changes to Part IV, Rule 4A.

#### PRICING RULES

##### A. Pricing Rules – General

- (1) The price for any new or existing service shall equal or exceed its TSLRIC unless:
  - (1) specifically exempted by the Commission based on public interest concerns; or
  - (2) the CLEC in good faith, ~~and upon Commission approval~~, prices the service in order to meet the equally low price of a competitor.
- (2) No price reductions that will result in prices below TSLRIC will be allowed unless approved by the Commission. No price reductions will be allowed for any existing services that are priced below TSLRIC on the effective date of this Plan, unless approved by the Commission.
- (3) When no TSLRIC study is readily available, the Commission may, at its discretion, consider a surrogate for the TSLRIC cost study as the basis for analyzing the price floor requirement.

##### C. Part V – Toll Service Provider Streamlined Regulation Plan

BSLD notes that while the Staff's proposed Toll Service Provider Streamlined Regulation Plan does offer some welcomed streamlining of the time frames in which tariff

filings would become effective, the proposed plan also imposes additional regulatory requirements. These additional regulatory requirements are unnecessary burdens on IXC's and do not appear to be consistent with the "streamlined regulation" envisioned by the Commission.

For example, Part V, section 4A proposes that toll providers provide customer notification of any price increase to all affected customers at least 7 calendar days before any regulated prices are increased. BellSouth Long Distance is not opposed to such a notice requirement. However, Section 4B, which proposes that any affected customer may, within 30 days of the effective date of any price increase, elect to cancel his subscription to a service that has been increased and receive a credit for the amount of the increase, is inconsistent with the prior notice requirement and should be eliminated. A customer who receives at least seven days prior notice of a price increase should not be permitted to continue his service beyond the price increase date, cancel his service sometime in the next thirty days, and thereby receive a refund. The customer will have had ample opportunity to cancel his service prior to the price increase. If he fails to do so, he should not be rewarded with a refund. Moreover, customers may cancel their service during the 30-day period for reasons other than a particular price increase. They may, for example, be moving to a new location. There is no reason for such a customer to be the beneficiary of a refund. This section also ignores the special circumstances of customers who subscribe to BellSouth Long Distance's service pursuant to a contractual arrangement. Many of BellSouth Long Distance's contracts with its larger customers provide that the prices for the services obtained under contract can nonetheless change during the term of the agreement. In such a case, the customer should not be permitted to cancel his agreement pursuant to this section, let alone obtain a refund.

Accordingly, BellSouth Long Distance requests that section 4B be eliminated from the plan as shown below.

4A. Toll providers will provide customer notification of any price increases to all affected customer either by bill message, bill insert or direct mail at the option of the Company at least seven (7) calendar days before any regulated prices are increased. Notice of a price increase shall include at a minimum the effective date of the price change(s), the existing price(s), and the new price(s).

~~4B. Any affected customer may, within thirty (30) days of the Effective Date of any price increase, elect to cancel his/her subscription to a service that has been increased and toll providers will credit the customer's bill by the amount of the price increase if the increase has been reflected on the customer's bill prior to the cancellation of the service.~~

In the alternative, BSLD requests that the section be revised to exclude customers served pursuant to a contract between a company and the customer and to specify that, in order to obtain a credit from a company, a customer must both specifically identify the price increase as the reason for cancellation of service and request a credit for the amount of the price increase. BellSouth Long Distance therefore suggests the following changes to

Section 4B:

4B. Any affected customer not under a contract for the provision of its toll service may, within thirty (30) days of the Effective Date of any price increase, elect to cancel his/her subscription to a service that has been increased and, if the customer states that the reason for cancellation was the price increase and requests a credit, toll providers will credit the customer's bill by the amount of the price increase if the increase has been reflected on the customer's bill prior to the cancellation of the service.

Part V, section 5B of the ATRP requires that toll providers submit certain customer name and service location information on a quarterly basis. BellSouth Long Distance does not identify its 1+ customers by these categories in its systems and thus would be unable to comply with such a requirement. Since these reports are not presently provided, the imposition of quarterly reports now is inconsistent with the goal of "streamlined regulation"



and should be deleted from the proposed rules. BellSouth Long Distance therefore suggests the following change:

#### 5. REPORTING & FILING REQUIREMENTS

A. Toll providers will comply with the Commission's filing requirements in either hard copy or electronic format (or both as directed by the Commission). Toll providers will provide web access to their Commission approved tariffs and an archive of previously approved tariff pages. Alternatively, toll providers will submit to the Commission, within 5 work days from the effective date of tariff revisions, an updated electronic version of their entire tariff and an updated archive of previously approved tariff pages. The archive of previously approved tariff pages is for revisions beginning no later than the implementation date of this Plan.

~~B. On a quarterly basis, toll providers will report the customer name and service location of pay phone service provider (PSP), shared tenant service (STS) and Hotel/Motel service customers in Alabama wherein the toll provider serves as the underlying toll carrier.~~

#### Intercarrier Compensation

#### D. Alabama Access Reduction Fund

BellSouth Long Distance notes that a group of independent incumbent local telephone companies ("the Independents") have petitioned the Commission to incorporate into this proceeding a new intercarrier compensation mechanism. Specifically, the Independents have proposed the creation of the Alabama Access Reduction Fund ("AARF") to help provide them revenue stability. BSLD would oppose a sudden expansion of this proceeding to include a far-ranging and highly complex intercarrier compensation mechanism. Given the prospect of the Federal Communications Commission ("FCC") taking action to modify the current intercarrier compensation regime as well as the structure of Universal Service support, the Commission should refrain from creating a new subsidy mechanism and

certainly should separate any such effort from the immediate proceeding particularly here in light of the highly questionable legal basis for such a fund.

The FCC has reviewed a similar state fund. In a Memorandum Opinion and Order in File No. CWD 98-90, the FCC provided what it termed "guidance" for universal service issues. This guideline indicates that the AARF might well be declared to be unlawful since only some types of companies, and not others, would receive support under the AARF. For this reason, BellSouth Long Distance respectfully submits that the Commission should reject the AARF proposal.

Respectfully submitted,

BELLSOUTH LONG DISTANCE, INC.

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## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Comments of BellSouth Long Distance, Inc. on all parties of record by placing a copy of same in the United States Mail, postage prepaid, on this the 22<sup>nd</sup> day of November, 2004.

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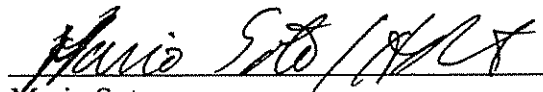
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